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Civil Code and Related Subjects: Prescription

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SECURITY DEVICES

*Joseph Dainow**

In the common law, a mortgage on land can have an identity and existence separate and independent from the principal obligation which it is intended to secure. In the civil law, and in Louisiana, this is not possible on account of the principle of "accessory";¹ without a valid and subsisting principal obligation there can be no mortgage. In *Baton Rouge Production Credit Association v. Alford*,² the court found that the mortgage note held by the debtor's brother-in-law did not represent any actual indebtedness but instead that the whole transaction was a simulation to defraud creditors. Accordingly, it was ordered that the mortgage be cancelled from the records — thereby raising into first position a subsequently recorded judicial mortgage.

PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

The requisites for the ten-year acquisitive prescription of immovables include "good faith" and "just title" as two separate and distinct elements.¹ It is not unusual to find them discussed as inter-related and overlapping to a degree that destroys any individual identity of the respective concepts. A clear and well-drawn distinction is made in the case of *Bel v. Manuel*.² The plea of prescription was based principally upon a conveyance in which two sisters sold "all of our undivided interest . . . inherited by us from our deceased mother." Although a quit-claim deed, as such, has been accepted as a "just title" for purposes of acquisitive prescription,³ the court, in an understatement, reserved doubt as to whether the above conveyance would satisfy the requirement, even when taken in conjunction with other conveyances of additional undivided interests in the same property.

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1. LA. CIVIL CODE arts. 3284, 3285, 3293 (1870).

2. 235 La. 117, 102 So.2d 866 (1958).

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1. LA. CIVIL CODE art. 3479 *et seq.* (1870).

2. 234 La. 135, 99 So.2d 58 (1958).

3. *Smith v. Southern Kraft Corp.*, 202 La. 1019, 13 So.2d 335 (1943).

However, while the just title is an objective element, the "good faith" requirement is strongly subjective. Thus, where the transferee acquired an undivided interest, or a number of undivided interests and unrelated fractional interests, in a tract of land, he never dealt with any person or group of persons who purported to own the whole property. Therefore, he could not have an honest belief that he was the real owner of the whole tract. In rejecting the plea of prescription, the weight of the decision was placed on the lack of the necessary element of good faith.

MINERAL RIGHTS*

*Harriet S. Daggett***

A suit was filed in *Leaderbrand and Hardy v. Shallow Oil Co.*¹ for the cancellation of an oil and gas sub-lease on ground that the ten shallow wells thereon were not producing in commercial quantities and for damages for removal of certain equipment and for attorney's fees. During the course of the trial defendant abandoned any claim to six of the wells and the lower court gave judgment to plaintiff cancelling the sub-lease except as to five acres around each of four producing wells and refused the demand for attorney's fees. It was stipulated in the record that the lease was paying in commercial quantities as to the landowner, lessor, and the defendant, sub-lessee. The court held that the production could not be governed by the amount received for the small overriding royalty because to do so would be to destroy the rights of the lessor and the operating sub-lessee. This decision is in line with the jurisprudence on the test of production in commercial quantities.² The court denied plaintiff's claim for attorney's fees. This result seems eminently correct. The court distinguished the prior jurisprudence³ where attorney's fees were allowed for partial cancellation on the ground that only partial cancellation was sought and obtained. In the instant case, an entire cancellation was sought and only partial cancellation was obtained.

*Grateful acknowledgment is hereby registered to my student and friend Earl E. Veron for his work in the preparation of these materials.

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1. 234 La. 796, 101 So.2d 673 (1958).

2. Noel Estate, Inc. v. Murray, 223 La. 387, 65 So.2d 886 (1953).

3. Wier v. Grubb, 228 La. 254, 82 So.2d 1 (1955); Nunley v. Shell Oil Co., 229 La. 349, 86 So.2d 62 (1956).